

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	<b>MB Docket No. 09-13</b>
	)	<b>CSR-8126</b>
<b>Petitions for Declaratory Ruling Regarding</b>	)	<b>CSR-8127</b>
<b>Public, Educational and Governmental</b>	)	<b>CSR-8128</b>
<b>Programming</b>		

**COMMENTS OF THE NEW JERSEY  
DIVISION OF RATE COUNSEL**

The New Jersey Division of Rate Counsel (“Rate Counsel”)<sup>1</sup> herein submits its concurrence and support of the relief sought by the Petitioners<sup>2</sup> (City of Dearborn, Michigan, the Alliance for Community Media, et. als., and the City of Lansing, Michigan) in this matter.

Rate Counsel agrees with the Petitioners’ proposition, consistent with the Federal Communications Commission (“FCC”) Media Bureau (“Bureau”) statements, that cable operators are required to provide basic tier service that includes Public, Educational and Governmental (“PEG”) programming.<sup>3</sup> Consistent with this basic tenet is the contention that subscribers suffer the economic discriminatory impact of having to pay more for the same service when PEG programming is provided on higher service tiers. Indeed, Rate

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<sup>1/</sup> The New Jersey Division of Rate Counsel is situated within the New Jersey Department of the Public Advocate and is statutorily authorized to represent the public interest of New Jersey ratepayers, including cable television subscribers, before state and federal regulatory agencies. See N.J.S.A. 52:27EE-48, 55.

<sup>2/</sup> Rate Counsel recognizes that this matter concerns the three Petitions filed on behalf of the Alliance for Community Media, et. als., the City of Lansing, Michigan, and the City of Dearborn, Michigan. Accordingly, Rate Counsel submits the within comments as applicable to all three Petitions.

<sup>3/</sup> See Letter dated January 18, 2009 of Monica Shah Desai, Chief, Media Bureau, summarizing the Bureau’s recommendations to the Commission. See also, Statement of Monica Shah Desai, Chief, Media Bureau, Federal Communications Commission delivered September 17, 2008 before the Subcommittee on Financial Services and General Government, indicating that the federal statute requires that PEG channels be placed on the basic service tier along with your local broadcast channels.

Counsel has consistently advocated, in the context of opposing petitions seeking declarations of effective competition, that the basic service tier include PEG programming and that provision by alleged competitors on other tiers, if at all, violates FCC rules.<sup>4</sup> Additionally, the provision of PEG programming must adhere to service quality standards applicable to all PEG product providers, including delivery of intact closed-captioned PEG programs.

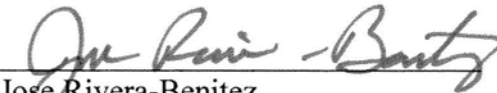
Accordingly, Rate Counsel supports the Petitions seeking a declaratory ruling concerning the provision and delivery of PEG programming on the basic service tier.

Respectfully submitted,

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New Jersey Public Advocate

Stefanie A. Brand, Director,  
New Jersey Division of Rate Counsel

By:

  
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New Jersey Division of Rate Counsel

Dated: April 1, 2009

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<sup>4</sup>/ Rate Counsel currently has several pending Applications for Review contesting findings of effective competition where the asserted competitor to the incumbent cable provider does not provide PEG programming on any tier. Rate Counsel avers that the alleged competitor's failure to provide PEG programming is a failure to provide programming comparable to the incumbent's basic service. See Applications for Review in: *I/M/O Cablevision of Oakland Inc. and CSC TKR Inc., Petition for a Determination of Effective Competition in Four Communities in New Jersey*, CSR-8089-E and CSR- 8090-E, filed March 23, 2009; *I/M/O Comcast Cable Communications, LLC, on behalf of Subsidiaries and Affiliates, Petitions For a Determination of Effective Competition In 107 Franchise Areas in New Jersey*, CSR 7588-E, CSR 7589-E, CSR 7590-E, CSR 7591-E, CSR 7592-E, CSR 7800-E, CSR 7801-E, CSR 7803-E, CSR 7804-E, CSR 7805-E, CSR 7607-E, CSR 7818-E, CSR 7865-E, CSR 7866-E, CSR 7867-E, CSR 7868-E, CSR 7869-E, CSR 7870-E, CSR 7872-E, CSR 7877-E, CSR 7885-E filed March 20, 2009; *I/M/O Subsidiaries of Cablevision Systems Corporation Petitions For a Determination of Effective Competition In 101 Communities in New Jersey*, CSR 7118-E, CSR 7119-E, CSR 7197-E, CSR 7198-E, CSR 7597-E, CSR 7598-E, CSR 7599-E, CSR 7604-E, CSR 7605-E, CSR 7606-E, CSR 7607-E, CSR 7608-E, CSR 7609-E, CSR 7979-E, CSR 7980-E, CSR 7981-E filed October 30, 2008.